

HOUSE BILL 388

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 6, relative to the Equal Opportunity
Scholarship Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, is amended by adding Sections 2 through 8 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Equal Opportunity Scholarship Act."

SECTION 3. As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of education;
- (2) "Eligible student" means a low-income student who:
 - (A) Resides in a Tennessee school district:
 - (1) With average daily membership of thirty-eight thousand (38,000) or more; or
 - (2) Which is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;
 - (B) Was a member of a household whose total annual income during the year prior to initial receipt of a scholarship qualified or would have qualified the student as a low-income student; and
 - (C) Was eligible to attend a public school during the semester preceding the semester in which the student receives a scholarship under this part or is starting school in Tennessee for the first time;

(3) "Low income student" means a student who is eligible for free or reduced price lunch under 42 U.S.C. § 1751 et seq.;

(4) "Parent" includes a guardian, custodian or other person with the authority to act on behalf of the child;

(5) "Participating school" means either a public school in the resident school district other than the school the eligible student is attending, a public charter school or any nonpublic school that provides education to elementary or secondary students, or both, and has notified the department of its intention to enroll equal opportunity scholarship students and comply with all requirements regarding the award and use of equal opportunity scholarships; and

(6) "Resident school district" means the public school district in which the student resides.

SECTION 4.

(a) Any eligible student shall qualify for an annual scholarship to attend a participating school.

(b) Eligible students may attend a participating school until graduation from high school or reaching twenty-one (21) years of age, whichever occurs first.

(c) The scholarship amount shall be shall be equal to the lesser of:

(1) The participating school's annual cost per pupil, including both operational and capital facility costs; or

(2) Ninety-five percent (95%) of the dollar amount the resident school district would have allocated per pupil from state and local sources to serve and educate the eligible student had the student enrolled in the resident school district.

(d) The scholarship is the entitlement of the eligible student under the supervision of the student's parent and not that of any school. If, however, a scholarship student withdraws from, leaves or otherwise fails to complete the school year at a participating school, then the proportionate share of the student's scholarship money for the part of the school year not completed shall revert to the student's resident school district; provided, that the student returns to the resident school district.

(e) A participating school may not refund, rebate or share a student's scholarship with a parent or the student in any manner. A student's scholarship may only be used for educational purposes.

(f) A participating public school or public charter school shall not require eligible students to pay any amount above that provided by the scholarship to attend the school. A nonpublic participating school may charge, but is not required to charge, parents of eligible students, tuition and fees to attend the school. Except as permitted by Section 7(b), no financial aid shall be provided from state or local funds above the scholarship amount for which the eligible student qualifies.

(g) Participating public schools or public charter schools that have more eligible students applying than spaces available shall fill the available spaces by a random selection process, except that participating public schools or public charter schools may give preference to siblings of enrolled students and previously enrolled scholarship students under this part.

(h) If a student is denied admission to a participating school because it has too few available spaces, the eligible student may transfer the student's scholarship to a participating school that has spaces available.

(i) Qualifying financially for a scholarship does not guarantee a student admission to or continued matriculation at a participating school. A school may deny

admission to an otherwise eligible student or dismiss a student for engaging in criminal activities or other unacceptable behaviors.

(j)

(1) Eligible students shall be counted in the enrollment figures for their resident school district for the purposes of calculating state funding to the resident school district. An amount equal to ninety-five percent (95%) of the per pupil share of state and local funding received by the resident school district shall be allocated for the scholarship of an eligible student attending a participating school.

(2) The department of education shall promulgate rules and regulations that provide for the determination of the allocation of state and local funds as provided in subdivision (j)(1) and the payment of such funds for eligible students' scholarships at participating schools. The department shall reserve state scholarship funds for direct payment of scholarships to participating schools. The resident school district shall make payment to participating schools of the local share of funding for scholarships as directed by the department. Any state funding allocated to the payment of scholarships that exceeds the total cost of scholarships for eligible students of a resident school district shall be paid to the resident school district. The department shall promulgate the rules and regulations effective for the 2011-2012 school year.

(k) The department shall promulgate rules and regulations consistent with this part regarding:

(1) The eligibility and participation of nonpublic schools, including timelines that will maximize student and public and nonpublic school participation;

(2) The calculation and distribution of scholarships to eligible students;
and

(3) The application and approval procedures for scholarships for eligible students and participating schools.

SECTION 5.

(a) To ensure that students are treated fairly and kept safe, a participating nonpublic school shall:

(1) Comply with all health and safety laws or codes that apply to nonpublic schools;

(2) Hold a valid occupancy permit, if required by its municipality;

(3) Certify that it will comply with 42 U.S.C. § 2000d regardless of whether the school receives federal financial assistance; and

(4) Comply with all state laws that apply to nonpublic schools regarding criminal background checks for employees and exclude from employment any persons not permitted by state law to work in a nonpublic school.

(b) To ensure that public funds are spent appropriately, a participating nonpublic school shall:

(1) Demonstrate its financial accountability by:

(A) Submitting a financial information report for the school conducted by a certified public accountant that complies with uniform financial accounting standards established by the department; and

(B) Having the auditor certify that the report is free of material misstatements and fairly represents the costs per pupil under Section

4(c). The auditor's report shall be limited in scope to those records that

are necessary for the department to make payments to participating schools on behalf of parents for scholarships; and

(2) Demonstrate its financial viability by showing it can repay any funds that might be owed the state, if the school is to receive fifty thousand dollars (\$50,000) or more during the school year, by:

(A) Filing with the department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the equal opportunity scholarships expected to be paid during the school year to students admitted at the participating school; or

(B) Filing with the department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the equal opportunity scholarships expected to be paid during the school year to students admitted at the participating school.

(c) To ensure that schools provide academic accountability to parents of scholarship students, a participating school shall regularly report to the parent on the student's progress.

(d) A participating school is autonomous and not an agent of the state or federal government and therefore:

(1) The department or any other state agency may not in any way regulate the educational program of a participating nonpublic school that accepts an equal opportunity scholarship;

(2) The creation of this scholarship does not expand the regulatory authority of the state, its officers or any school district to impose any additional

regulation of nonpublic schools beyond those necessary to enforce the requirements of this part; and

(3) A participating school shall be given the maximum freedom to provide for the educational needs of its students without governmental control.

SECTION 6.

(a) The department shall ensure by July 15 of each year that eligible students and their parents are made aware of the scholarship and their options and are informed of which schools will be accepting equal opportunity scholarship students.

(b) The department shall create a standard application that students interested in the equal opportunity scholarship can use to submit to participating schools to establish eligibility and apply for admission. Participating schools may require supplemental information from applicants; provided, however, that no information beyond that requested from other students applying for admission who are not seeking equal opportunity scholarships shall be required. The department shall ensure that the application is readily available to interested families through various sources, including the Internet.

(c) The department may bar a school from equal opportunity scholarship participation, if the department establishes that the participating school has:

(1) Intentionally and substantially misrepresented information required under Section 5;

(2) Routinely failed to comply with at least three (3) of the accountability standards established in Section 5;

(3) Failed to comply with Section 4(e); or

(4) Failed to refund to the state any scholarship overpayments in a timely manner.

(d) If the department decides to bar a school from participating, it shall notify eligible students and their parents of its decision as quickly as possible. The department shall at the same time inform parents of students' options for transfer to other participating schools or to a school in the resident school district that the student is eligible to attend without a scholarship.

SECTION 7.

(a) The resident school district shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records while complying with the Family Educational Rights and Privacy Act of 1974, codified in 20 U.S.C. § 1232g.

(b) The resident school district shall not be required to provide transportation for eligible students to and from participating schools; however, the resident school district is encouraged to work with parents of eligible students to create solutions for individual transportation problems. If the resident school does provide any transportation services, then the amount expended for transportation services shall not exceed the total of the funds remaining from the per pupil allotments that were not expended for scholarship awards.

SECTION 8. The department of education shall promulgate rules and regulations as necessary for the administration of this part and to otherwise effectuate the purposes of this act. Rules promulgated under this part may be promulgated as emergency rules in accordance with § 4-5-208. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in, title 4, chapter 5.

SECTION 9. This act shall take effect July 1, 2011, the public welfare requiring it.